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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 Adv. Case No. 19-08250-rdd

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6 In the Matter of:

7  
8 SEARS HOLDINGS CORPORATION, et al.,

9

10 Debtors.

11 - - - - - x

12 SEARS HOLDINGS CORPORATION et al.,

13 Plaintiffs,

14 v.

15 LAMPERT et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 300 Quarropas Street, Room 248

20 White Plains, NY 10601

21

22 August 31, 2022

23 10:10 AM

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Page 2

1 B E F O R E :

2 HON ROBERT D. DRAIN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: JUSTIN WALKER

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1 settlement.

2 THE COURT: Okay. Let me -- I mean, I got this  
3 proposed order this morning, so I just want to make sure --

4 MR. SCHROCK: Yeah.

5 THE COURT: -- I understand the point that you  
6 just made that --

7 MR. SCHROCK: It's going to be --

8 THE COURT: -- the \$10 million payments are to be  
9 made --

10 MR. SCHROCK: On the effective date.

11 THE COURT: Yes. Paragraph 14(b) does say on the  
12 effective date. You're right.

13 MR. SCHROCK: Right.

14 THE COURT: And there's an additional \$10 million  
15 reserve on the effective date --

16 MR. SCHROCK: Correct.

17 THE COURT: -- for Cyrus and PBGC, pending outcome  
18 of the appeal or settlement of it. But, so you correct me  
19 on that point, but I'm still -- I still want to make -- so  
20 that assumes the effective date will have occurred, which  
21 means that --

22 MR. SCHROCK: Correct.

23 THE COURT: -- administrative expenses and secured  
24 claims will either be paid on the effective date, or if  
25 they're objected to, appropriately reserved for, so I guess

1 settlement.

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3 proposed order this morning, so I just want to make sure --

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21 means that --

22 MR. SCHROCK: Correct.

23 THE COURT: -- administrative expenses and secured  
24 claims will either be paid on the effective date, or if  
25 they're objected to, appropriately reserved for, so I guess

1 that's the focus for what Mr. Griffith should be walking me  
2 through.

3 MR. SCHROCK: Yes, Your Honor, and we'll be sure  
4 to cover that, because we did come up with that number in  
5 the settlement based upon what the Debtors' projections are  
6 for, you know, with sufficient cushion for excess cash that  
7 we could safely say that after payment of all those expenses  
8 to go effective and reserving for anything that's disputed,  
9 that we would have, you know, that \$30 million we would make  
10 those payments and that that would clear the way for the  
11 effective date.

12 THE COURT: Okay. So --

13 MR. FAIL: Your Honor, if --

14 THE COURT: Go ahead.

15 MR. FAIL: Good morning. It's Garrett Fail. I  
16 think Mr. Griffith can confirm my statements that -- the  
17 following statements that the \$180 million in settlement  
18 proceeds that are coming in, together with cash on hand at  
19 the proposed effective date, will be sufficient to both  
20 satisfy allowed administrative expense claims including  
21 those that are -- have received partial payment pursuant to  
22 the administrative consent program and so there's roughly  
23 \$27.5 million owed on account of that constituents that have  
24 received part, plus those that have not received, you know,  
25 the opt outs. That's another \$6.4 million of allowed

1 claims, so clearly, 180 minus 33, there's sufficient to pay  
2 the allowed administrative.

3 There's also sufficient cash to satisfy a reserve  
4 for 100 percent of the asserted amount of any disputed  
5 administrative claims. There will be sufficient amount to  
6 reserve for the asserted amount of the secured claim that's  
7 outstanding. There will be --

8 THE COURT: And that's the --

9 MR. FAIL: -- sufficient --

10 THE COURT: That's the Carl Ireland claim?

11 MR. FAIL: The relator, Your Honor, at \$18.2  
12 million.

13 THE COURT: Right. Okay.

14 MR. FAIL: There's sufficient amounts to pay the  
15 amounts owed under the retiree settlement of 1.7. There's  
16 sufficient amounts to pay priority severance that's ready to  
17 be paid on the effective date of 3.6. There's available  
18 amounts to pay taxes that are agreed upon of another 14.  
19 And there's a sufficient amount in addition to all of that  
20 to reserve for disputed priority and disputed tax  
21 obligations.

22 And then there's further -- and very critically  
23 and importantly -- a sufficient amount to reserve pursuant  
24 to the plan and the liquidating trust agreement for the  
25 future winddown activities of the liquidating trust. And

1 then, Your Honor, after that, there is \$10 million available  
2 to go to PBGC, \$10 million to go to Cyrus, \$10 million to  
3 put aside so that it is not used for winddown activities,  
4 and then additional amounts expected to be available, a  
5 small amount -- you know, hopefully, it grows -- but  
6 additional cash after that and remaining assets to be  
7 monetized after that.

8 But Your Honor, the intent of this settlement was  
9 to allow the plan to go effective, which in our mind, means  
10 satisfying administrative claims, secured priority, and  
11 reserving, as the plan requires, in full until it's  
12 resolved, the remaining disputed claims, and after that,  
13 Cyrus and PBGC will split the amount after reserves for  
14 amounts required for the winddown activities and the \$10  
15 million -- the three \$10 million chunks contemplate that.

16 And I think -- I would hope that in summary, Mr.  
17 Griffith can confirm that information for you.

18 THE COURT: Before I ask Mr. Griffith that  
19 question, in covering the administrative expenses, both  
20 those that have been allowed and a full reserve for the  
21 others that are still open, that haven't been disallowed,  
22 have you counted the amounts that are currently being sought  
23 in the final fee applications?

24 MR. FAIL: Thank you, Your Honor. Yes. Included  
25 in my calculation of what would remain to be distributed by

1 the liquidating trust and the cash on hand balances, include  
2 payments in full of amounts accrued and incurred prior to  
3 that date.

4 So there are sufficient funds to pay the  
5 administrative claims that have been filed plus other  
6 administrative expenses incurred throughout the cases in the  
7 ordinary course, including the professional fees that are  
8 being sought today and then still have money to be  
9 distributed to the PBGC and now Cyrus, and that was part of  
10 the success of the settlement, Your Honor, and in  
11 particular, getting the quantum of funds that we did in  
12 order to satisfy all expenses and provide a material return  
13 to the beneficiaries of the liquidating trust.

14 THE COURT: Okay. So, Mr. Griffith, you heard Mr.  
15 Fail's summary being permitted with the Debtors' current  
16 cash and claim position. Was it accurate?

17 MR. GRIFFITH: It was accurate, Your Honor, yes.

18 THE COURT: Okay. Does anyone want to question  
19 either -- question Mr. Griffith or argue with Mr. Fail about  
20 that summary?

21 MS. MORABITO: Your Honor, Erika Morabito of Quinn  
22 Emanuel on behalf of the admin expense claim rep. Can you  
23 hear me --

24 THE COURT: Yes, yes.

25 MS. MORABITO: -- see me okay?

1 Your Honor has, but assuming this is approved, Your Honor,  
2 it would resolve our reservation of rights that we filed at  
3 Docket 10596.

4 THE COURT: Okay.

5 MR. LEBLANC: Thank you.

6 THE COURT: All right. So as far as -- I mean,  
7 this was the relief that the relator requested, but the cash  
8 will be set aside in the \$18 million and change amount that  
9 was in Mr. Ireland's reservation and that will be the amount  
10 under the order, I'm assuming, the prior order, dealing with  
11 his adequate protection rights.

12 MR. SCHROCK: It's the amount of the claim, Your  
13 Honor --

14 THE COURT: Right.

15 MR. SCHROCK: So pursuant to the plan --

16 THE COURT: Right, but he's -- that's his adequate  
17 protection is that there's --

18 MR. SCHROCK: Agree, Your Honor. Yes, Your Honor.

19 THE COURT: And I'm assuming --

20 MR. HALPERIN: Your Honor --

21 THE COURT: -- fairly promptly distributed.  
22 There's no reason that I'm aware of to keep it hanging out  
23 there.

24 MR. SCHROCK: The claim hasn't been allowed yet,  
25 Your Honor, but you know, as soon as it is allowed, the

1 distributions would be made.

2 THE COURT: Right. Okay.

3 MR. HALPERIN: Your Honor, it's Alan Halperin  
4 (indiscernible).

5 THE COURT: Yes.

6 MR. HALPERIN: Alan Halperin on behalf of relator  
7 Carl Ireland. I would just start by saying it really is  
8 just a reservation of rights. We're delighted at the  
9 settlement. It relieves a lot of anxiety and a lot of  
10 concern about the liquidity and ability to get to an end  
11 game. I think everything I've heard works. The only thing  
12 I just want to be clear about -- need to be precise and  
13 clear -- the reserves that are being made where reserve was  
14 use for Relator Carl Ireland. A good look at the Cyrus  
15 language, think it was, we can see, those funds are  
16 restricted, correct, meaning they won't sit there until and  
17 unless claim is allowed or paid.

18 THE COURT: The 18 --

19 MR. HALPERIN: -- otherwise.

20 THE COURT: The \$18 million and change that is  
21 reserved on the Ireland claim.

22 MR. SCHROCK: In the disputed claims reserve.  
23 Yes, Your Honor.

24 THE COURT: Okay.

25 MR. HALPERIN: Yes.